ANTECEDENT INDEBTEDNESS AS CONSTITUTING VALUE IN NEW YORK.

To what extent an antecedent indebtedness constitutes value, in its legal sense, is a subject that has been much discussed and that has led to considerable conflict of opinion, particularly in the law of negotiable instruments. The attention given to this subject by the Commissioners on Uniform State Laws, in connection with the drafting of acts recommended by them for adoption by all the states, warrants some consideration of the effect of these proposed statutes on the former law, as they are being quite generally adopted, and four of them have become laws in New York, though with certain changes from the original drafts, as will be seen.

The first of these statutes to be passed here was the Negotiable Instruments Law.[1] Prior to the passage of this statute, it had long been the rule in New York that an indorsee of negotiable paper, taken as collateral security for an antecedent debt, without having given other consideration, was not a holder for value, when the paper had been diverted from the purpose for which it was entrusted to the payee, or when there was some other prior equity,[2] and this was also true when the paper was taken in payment of such debt, unless it was shown that the debt was "actually and absolutely" extinguished.[3] And some rather subtle distinctions were drawn in regard to what constituted consideration sufficient to be regarded as value in such cases, it being held that the surrender of the debtor's notes, whether past due or not, was sufficient,[4] but that the surrender of a dishonored check was not.[5]

In *Stalker* v. *McDonald*[6] it was said:

"This principle, of protecting the *bona fide* holder of negotiable paper who has paid value for it, or who has relinquished some available security or valuable right on the credit thereof, is derived from the doctrines of the courts of equity in other cases where a purchaser has obtained the legal title without notice of

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[1]Laws 1897, c. 612, now Consol. Laws, c. 38 (Laws 1909, c. 43).

[2]Coddington *v.* Bay (1822) 20 Johns. 637; Stalker *v.* McDonald (1843) 6 Hill 93; U. S. National Bank *v.* Ewing (1892) 131 N. Y. 506.

[3]Moore *v.* Ryder (1875) 65 N. Y. 438; Phoenix Ins. Co. *v.* Church (1880) 81 N. Y. 218; Mayer *v.* Heidelbach (1890) 123 N. Y. 332.

[4]Youngs *v.* Lee (1855) 12 N. Y. 551; Pratt *v.* Coman (1868) 37 N. Y. 440.

[5]Phoenix Ins. Co. *v.* Church, *supra.*

[6](1843) 6 Hill 93.

the equitable right of a third person to the property. It has been uniformly held by the courts of equity in such cases that the purchaser who has obtained the legal title as a mere security or payment of a pre-existing debt, without parting with anything of value, is not entitled to hold the property as against the prior equitable owner."

If this was the true basis of the New York rule, it is very difficult to regard as logically consistent the cases which hold that when accommodation paper has been delivered without restriction as to its use, the holder who takes it simply as collateral security for an antecedent debt is protected as a holder for value.[7] In such a case, the consideration given by the holder is not different whether the paper is fraudulently diverted or not; so far as he is concerned, the cases are identical. The difference must be found in the equity of the accommodation party; but whatever the reasons for the distinction may be, it is well recognized in the decisions.

It is to be noted that in the cases last cited, the court does not say that the transferee is a holder for value, but that he "is entitled to the position of a holder for value" or "occupies the position of a holder for value, and is protected as such." If there is any distinction, it seems to be without practical difference, and the language used perhaps reflects the difficulty in determining from a theoretical point of view just what the consideration is, in any case of a transfer as collateral security for a past debt. In *Grocers Bank* v. *Penfield*[8] the court says "the existing debt is a sufficient consideration for the transfer and no new consideration need be shown," meaning no doubt that it was sufficient that the transfer was good between the immediate parties, but in *Railroad Co.* v. *National Bank*,[9] a case where a note had been executed for the purpose of raising money and delivered to a note broker, who transferred it as collateral security for his own past debt, the following view is taken—

"We are of the opinion that the undertaking of the bank to fix the liability of prior parties, by due presentation for payment and due notice in case of non-payment,—an undertaking necessarily implied by becoming a party to the instrument,—was a sufficient consideration to protect it against equities existing between the other parties, of which it had no notice."

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[7] Grocers' Bank *v.* Penfield (1877) 69 N. Y. 502; Continental National Bank *v.* Townsend (1881) 87 N. Y. 8.

[8] (1877) 69 N. Y. 502.

[9] (1880) 102 U. S. 14, at p. 27.

In most jurisdictions, the New York rule did not prevail,[10] and it is undoubtedly true that the framers of the Negotiable Instruments Act intended to adopt the view of the case last cited, in which it was said—

"Our conclusion, therefore, is that the transfer, before maturity, of negotiable paper, as security for an antecedent debt merely, without other circumstances, if the paper be so indorsed that the holder becomes a party to the instrument, although the transfer is without express agreement by the creditor for indulgence, is not an improper use of such paper, and is as much in the usual course of commercial business as its transfer in payment of such debt. In either case, the *bona fide* holder is unaffected by equities or defences between prior parties, of which he had no notice. This conclusion is abundantly sustained by authority. A different determination by this court would, we apprehend, greatly surprise both the legal profession and the commercial world."[11]

Some of the sections of the Negotiable Instruments Law bearing on this point are as follows:

"Section 2—'Value' means valuable consideration.

Section 51—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Section 53—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien."

But the courts of this state have not agreed as to the effect of the statute.

In *Brewster* v. *Shrader*,[12] Werner, J., at Monroe Special Term, held that the former rule in New York had been changed, reasoning from the language of the statute and also from the well known purpose of those who prepared it, saying:—

"If the language of the section under consideration[13] were not obviously clear and unequivocal, and there were need of ascertaining the legislative intent in order to give proper effect to such language, the history of the subject, of the judicial decisions in England and the states of this country, and of the proceedings of the commission on uniformity of laws, leave no possible doubt as to the purpose of this section."

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[10]Swift *v.* Tyson (1842) 16 Pet. 1; Railroad Co. *v.* Nat. Bank. (1880) 102 U. S. 14.

[11]102 U. S. at p. 28. See Vol. 34, Reports Amer. Bar Assn. (1909) p. 1088.

[12](1899) 26 Misc. 480.

[13]§ 51.

But this view was not accepted by the Appellate Divisions of the First and Second Departments.[14] In *Sutherland* v. *Mead*,[15] in the First Department, Section 51 was construed to mean—

"that to constitute an antecedent or pre-existing debt a valuable consideration in support of a promissory note, that had been fraudulently diverted, as valid in the hands of a *bona fide* holder, the latter must have cancelled and in legal effect paid and discharged the antecedent or pre-existing debt. By still holding the debt he in fact parts with no value. It was not intended thereby that, where a debt continued to remain in existence and enforcible as such, and the note is taken as collateral security for its payment, such debt undischarged constitutes a valuable consideration, or the holder of the note one in due course as against the accommodation maker or endorser, who has been defrauded by the negotiation of the instrument. We are not to impute to the Legislature an intent to change a rule of law which has existed in uniform course of enforcement for over three-quarters of a century without a clear and unequivocal expression so to do."

The opinion refers with disapproval to the contrary view of Mr. Crawford, the author of the law.[16] Section 53 is not referred to in the cases cited, but Mr. Crawford thinks that it supports his view of the effect of the statute, when read with section 51.[17]

Since the passage of the Negotiable Instruments Law, the point has been discussed in one case in the Federal Courts in New York.[18] This was a claim against a bankrupt corporation, and Judge Ray, on facts which were regarded as showing that the accommodation notes, although issued illegally, had been issued without restriction as to their use, held that the holder as security for a past debt was protected as a holder for value but intimated that even if the paper had been fraudulently diverted, the decision would have followed the rule of the United States Courts, at least

[14]Sutherland *v.* Mead (1903) 80 App. Div. 103; Roseman *v.* Mahony (1903) 86 App. Div. 377; Bank of Amer. *v.* Waydell (1905) 103 App. Div. 25, aff'd. not passing on this point, (1907) 187 N. Y. 115.

[15](1903) 80 App. Div. 103, at p. 109.

[16]Crawford, Neg. Inst. Law (3rd ed.) 41.

[17]Some of the subsequent decisions in the lower courts have followed Sutherland *v.* Mead, *supra*, and Roseman *v.* Mahony, *supra*, but some have not. For very recent expressions of opinion on the subject see Broderick & Bascom Rope Co. *v.* McGrath (1913) 81 Misc. 199, and Barken *v.* Bender, N. Y. L. J. Apr. 5, 1913, (not reported) and editorial in N. Y. L. J. Apr. 7, 1913. The remarks in King *v.* Bowling Green Trust Co. (1911) 145 App. Div. 398, 402 are opposed to Sutherland *v.* Mead, *supra*, but the opinion says (p. 402) "No case in this state on the point has been called to our attention," and it would seem that a decision of the question here considered was unnecessary under the facts of the case.

[18]*In re* Hopper Morgan Co. (1907) 154 Fed. 249.

until the Court of Appeals had construed the Negotiable Instruments Law to the contrary.

As the Court of Appeals has not yet passed on the subject, it can only be said that the law is still unsettled in this state, although in other jurisdictions where the statute has been construed, the courts have held in many cases that its language enacts the Federal rule,[19] and have so held in states where that rule formerly did not prevail.[20]

Aside from the law of negotiable instruments, it has been the rule in all jurisdictions that only in a very limited class of cases could even a transferee for value hold property as against the true owner thereof, or free from prior equities. Within this class of cases may be mentioned those where a fraudulent buyer has transferred goods to a purchaser or pledgee in good faith, or where the true owner is estopped from asserting his title, and in all such cases it has been held in New York that to support the claim of the transferee, his situation must have been actually changed at the time of the transfer and an antecedent indebtedness is not sufficient as a consideration, even when extinguished.[21]

The doctrine is recognized in the Factors Act,[22] which expressly excepts from its provisions a transfer as security for a past debt—

"Every person who shall hereafter accept or take any such merchandise in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit."

This appears to include in the word "document" the expressions "bill of lading, custom house permit or warehouseman's receipt for the delivery of any merchandise," in the prior paragraph of the

[19]Trust Co. of St. Louis County *v.* Markee (1910) 179 Fed. 764; Voss *v.* Chamberlain (1908) 139 Ia. 569, 117 N. W. 269; Payne *v.* Zell (1900) 98 Va. 294, 36 S. E. 379; Campbell *v.* Fourth Nat. Bank (1910) 137 Ky. 555, 126 S. W. 114; Lowell *v.* Bickford (1909) 201 Mass. 543, 88 N. E. 1.

[20]National Bank of Commerce in St. Louis *v.* Morris (1911) 156 Mo. App. 43, 135 S. W. 1008; Graham *v.* Smith (1908) 155 Mich. 65, 118 N. W. 726; Brooks *v.* Sullivan (1901) 129 N. C. 190, 39 S. E. 822.

[21]Root *v.* French (1835) 13 Wend. 570; Weaver *v.* Barden (1872) 49 N. Y. 286; Barnard *v.* Campbell (1874) 55 N. Y. 456, 58 N. Y. 73; Stevens *v.* Brennan (1879) 79 N. Y. 254; Voorhis *v.* Olmstead (1876) 66 N. Y. 113; Jones *v.* Graham (1879) 77 N. Y. 628; Button *v.* Rathbone, Sard & Co. (1891) 126 N. Y. 187.

[22]Laws 1830, c. 179, now Personal Property Law, § 43, Laws 1909, c. 45, Consol. Laws, c. 41.

section. And the New York rule is supported by the weight of authority in this country.[23]

It remains to be considered to what extent this rule in New York has been changed by the enactment of the statutes to which reference will now be made. In their drafts of proposed statutes, known respectively as the Warehouse Receipts Law, Bills of Lading Law and Sales Law, as well as in the Negotiable Instruments Law, the Commissioners on Uniform State Laws endeavored to have the same rule in this regard apply to transfers of negotiable paper and of chattels, bills of lading and warehouse receipts, namely, that in all cases in which there was good faith, an antecedent indebtedness, without other circumstances, would be a consideration sufficient to constitute the transferee a holder for value, whether the transfer was by way of payment or as security.[24]

The language used to effect this intention in the three statutes now being considered, is found in the definition of value, which each statute contains in substantially similar language. As found in the Warehouse Receipts Law, it reads as follows:

"Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof, or as security therefor."

While this definition was adopted in New York in the Warehouse Receipts Law,[25] it is omitted in the Sales Law[26] and in the Bills of Lading Law.[27]

This definition in the Warehouse Receipts Law does not appear to have been cited in any case since its enactment, but the language used is so different from that of the sections of the Negotiable Instruments Law above quoted, that it is difficult to see how any construction can weaken its effect; taken as it reads, as Prof. Williston, who in part drafted the act, says, "it virtually enacts a rule of law"[28] and if this view is correct, it radically changed in regard to transfers of warehouse receipts, the rule prevailing in New York.

This extension of the meaning of value becomes even more

[23]See cases collated in 35 Cyc., 353-4.

[24]See Vol. 34, Reports Amer. Bar Assn. (1909) p. 1092.

[25]Laws 1907, c. 732, now General Business Law, Art. 9, § 142.

[26]Laws 1911, c. 571, forming Art. 5 of Personal Property Law, Consol. Laws, c. 41.

[27]Laws 1911, c. 248, forming Art. 7 of the Personal Property Law.

[28]Williston on Sales, 1036.

important when some other provisions of the act are considered. Section 92[29] defines a negotiable receipt; section 122 provides that negotiable receipts may be negotiated by indorsement, or when indorsed in blank or to the bearer, by delivery; section 124 provides, *inter alia,* that such receipts may be negotiated

"by any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery."

Section 125 provides:

"A person to whom a negotiable receipt has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him."

Section 131 provides:

"The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress."

While these provisions are not broad enough to include a mere trespasser, a thief or a finder, it would seem that any bailee of a negotiable warehouse receipt can now convey good title, not only to one who gave consideration upon the transfer, but even to one who took such receipt as security for a precedent debt or in payment thereof. If this be the law, the uncertainty which still exists in the law of negotiable instruments as to such transfers is the more surprising.[30]

[29]The section numbers are those of the General Business Law.

[30]It is worthy of note in this connection, that the definition of value above quoted, was adopted by the Legislature in 1907 deliberately. Argument against it was made before the Judiciary Committees of the Senate and Assembly and also before Governor Hughes, who signed the bill. See Vol. 34, Reports Amer. Bar Assn. (1909) p. 1092.

If this is the true meaning of the Warehouse Receipts Law, it is not in accord with the provisions of the Factors Act above referred to regarding these documents, but the Warehouse Receipts Law, as passed in 1907, contained[31] a provision repealing all legisislation inconsistent therewith. While this last section is omitted in the law as consolidated in the General Business Law, the latter must be read in connection with Laws 1909, c. 596, which prescribes rules of construction of the Consolidated Laws and contains the following language:

"The true purpose and intent of this act is to prescribe that the statute law of the state, so far as it has been reproduced in such consolidated laws * * * and all special laws in force at the time of the enactment of such consolidated laws, shall be of the same force and effect as they were before the enactment of such consolidated laws."

The importance of the omission of any similar definition of value from the Sales Law and from the Bills of Lading Law is evident, as the word "value" occurs many times in both statutes. For example,[32] Section 106 of the Sales Law provides:

"Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of the title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same."

The definition of "value" contained in the Sales Law as drafted and as generally adopted, but which was omitted from the law in New York is as follows:

"'Value' is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of title are taken either in satisfaction thereof or as security therefor."

It is superfluous to outline a state of facts where the application or non-application of such a definition of value would decide the case.

There seems no reason to doubt that the passage of the Sales Law has made no difference in the law in New York, so far as it

[31] § 60.

[32] The section numbers hereafter are those of the Personal Property Law.

requires a fresh consideration upon the transfer of a chattel to constitute the transferee thereof a holder for value, and this view is perhaps confirmed by the fact that the following provision in the original draft of the Sales Law has also been omitted in the New York statute, although enacted in New York in both the Warehouse Receipts Law and the Bills of Lading Law: "This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

Coming now to the Bills of Lading Law[33] it is curious to note that while this law omits any definition of value, its provisions regarding negotiability are much more sweeping even than those of the Warehouse Receipts Law.

Section 191 defines a negotiable bill of lading.

Sections 214 and 215 provide for negotiation by endorsement, or by delivery when endorsed in blank.

The following sections are quoted in full:

"Section 217—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

Section 218—A person to whom a negotiable bill has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Section 224—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion."

The above sections seem to give to a bill of lading, if negotiable as defined by the statute, almost every characteristic of negotiability, even to the extent that title may be obtained from one

[33]Laws 1911, c. 248, forming Art. 7 of the Personal Property Law.

who has no title, as a finder, if the transferee acts in good faith. The words "any person in possession of the same, however such possession may have been acquired" in Section 217, were certainly intended by the author of the Law to convey this meaning.[34]

Now, it may be argued that if the construction which the Negotiable Instruments Law has generally received outside of New York is correct, and if it is held by the Court of Appeals that the rule in regard to negotiable instruments in New York is now that laid down in *Railroad Co.* v. *National Bank*[35] quoted above, then the provisions of the statute regarding negotiability of bills of lading show an intention by the Legislature to give to the transfer thereof the same effect in all cases as a transfer of negotiable paper, particularly in view of the definition of value in the Warehouse Receipts Law and the provision of the Bills of Lading Law declaring its general purpose to make uniform the law of those states which enact it.

To support this view, it might be said, that if a precedent debt is in all cases where there is good faith, a sufficient consideration for the transfer of negotiable paper or of a warehouse receipt, whether by way of payment or security, that as the Legislature has made a bill of lading negotiable to the extent above indicated, it would be unreasonable to require any further consideration for its transfer, and that all commercial documents should be on the same footing, although the rule for chattels were different.

But it is submitted that such an argument is not sound, and that the Legislature, by a deliberate omission of the definition of value, both in the Sales Law in regard to chattels and in the Bills of Lading Law, has shown an intention which cannot be disregarded, not to change the law in the point under discussion, and that this is so whatever the rule may be as to negotiable instruments, and in spite of the change made in regard to warehouse receipts.

It may be added that the Sales Law, as passed in New York,[36] contains some fourteen sections in regard to "documents of title" defining and distinguishing negotiable and non-negotiable documents and providing for the effect of their negotiation and transfer. These sections are numbered 108 to 121 inclusive and are

[34]See Vol. 35, Reports of Amer. Bar Assn. (1910) pp. 569-71; also American Uniform Commission Acts (Pamphlet) published by Commissioners on Uniform State Laws, Jan. 1, 1910, pp. 243-44.

[35](1880) 102 U. S. 14.

[36]Laws 1911, c. 571, now Art. 5 of the Personal Property Law.

substantially, though not exactly, similar to provisions in the Warehouse Receipts Law, and in many respects similar to portions of the Bills of Lading Law. It has not seemed necessary to consider what effect these sections would have on the law relating to bills of lading and warehouse receipts, because of the language of section 158:

"Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the law to make uniform the law of warehouse receipts, or of the law, if enacted, to make uniform the law of bills of lading."[37]

While the foregoing was in preparation the Legislature of this state passed the so-called Uniform Transfer of Stock Act relating to transfers of shares of stock in corporations. This statute became a law on May 17, 1913, and is Chapter 600 of the Laws of 1913, taking effect September 1, 1913.

This statute adds a new Article to the Personal Property Law,[38] and repeals all inconsistent legislation.[39]

Before comparing the provisions of this statute with existing law, it is necessary to observe that its application is in some respects limited.

Section 184 provides:—

"The provisions of this article apply only to certificates issued after the taking effect of this article."

In view of the number of stock certificates issued prior to September 1, 1913, which will be outstanding for years to come, this section is of much greater practical importance than the similar sections of the Warehouse Receipts Law and Bills of Lading Law.

Section 183 provides among its definitions:—

"1. In this article, unless the context or subject matter otherwise requires—'Certificate' means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act."

The word "certificate" (aside from this definition in Section 183) occurs at least once in eighteen of the twenty-four sections which this statute adds to the Personal Property Law. In some

[37]The words "if enacted" are clearly an inadvertence, as the Bills of Lading Law (Laws 1911, c. 248) antedated the Sales Law (Laws 1911, c. 571) in New York by some weeks, although both took effect on Sept. 1, 1911.

[38]Art. 6, §§ 162-185 inclusive.

[39]§ 185.

of these sections (*e. g.*, § 176, "no lien or restriction unless indicated on certificate;" § 178, "lost or destroyed certificate") the word "certificate" might, because of the subject matter, be construed to relate solely to certificates of stock of New York corporations, but in those sections which relate to the effect upon the title to a certificate of stock and the shares represented thereby, of "endorsement," "delivery" and "transfer" (as defined in the act) there seems to be no reason either from the subject matter or context why the statutory definition should be restricted, or, unless perhaps to include corporations with Federal charters, why it should be enlarged.

The definition is doubtless a recognition of the rule that the statute law of the jurisdiction where a corporation is chartered, may prevent the legal title to its shares of stock from passing, even as to third persons, by mere endorsement and delivery of the certificate representing the shares. Such law would not be "consistent with this act," which accordingly would not apply.[40]

Considering now the provisions of the statute in those cases where it is applicable, it is to be noted that the definition of value found in the Warehouse Receipts Law is here repeated.

Section 183 provides:—

"1. In this article, unless the context or subject-matter otherwise requires * * * 'Value' is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor."

And, "though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title," delivery of an endorsed certificate is effectual[41] and as to "a purchaser for value in good faith without notice"[42] the indorsement of the apparent owner is effectual,

"though the indorser or transferor

(a) Was induced by fraud, duress or mistake to make the endorsement or delivery, or

(b) Has revoked the delivery of the certificate, or the authority given by the endorsement or delivery of the certificate, or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

[40]See Central Trust Co. *v.* West India Imp. Co. (1901) 169 N. Y. 314, 328, 329.

[41]§ 166.

[42]§ 168.

(d) Has received no consideration."[43]

And "purchaser" includes mortgagee and pledgee.[44]

These provisions when applicable, and they would doubtless be applicable at least in respect to a certificate of stock in a New York corporation issued after September first of this year, are evidently intended to extend to certificates of stock every quality of negotiability, so far as the nature of such instruments permits, and in such cases would change the present rule that a transferee of a certificate of stock is not protected against the rights of others than his transferor when the only consideration for the transfer is an antecedent debt.[45]

While no elaborate review of the authorities has been attempted, it is submitted that the foregoing outline of the subject considered, shows that the law in this regard is in a confused and unsatisfactory condition and that the result of various statutes as enacted in New York, has not been to place it on any logical or consistent footing.

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[43] § 167.

[44] § 183.

[45] See cases already cited, and in particular Weaver *v.* Barden (1872) 49 N. Y. 286.